

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 11, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID B.,

Plaintiff,

v.

KILOLO KAJAKAZI,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:21-cv-03009-SMJ

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 13, 14. Attorney D. James Tree represents David B. (Plaintiff); Special Assistant United States Attorney David Burdett represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs

1 filed by the parties, the Court grants Defendant's Motion for Summary Judgment
2 and denies Plaintiff's Motion for Summary Judgment.

3 4 JURISDICTION

5 Plaintiff filed an application for Disability Insurance Benefits on March 21,
6 2016, alleging disability since August 1, 2014, due to back pain, bilateral shoulder
7 injury/pain, bilateral hip injury/pain, neck pain, and obesity. Tr. 243-44. The
8 application was denied initially and upon reconsideration. Tr. 298-300, 302-07. An
9 Administrative Law Judge (ALJ) held a hearing on December 19, 2017, Tr. 45-
10 74171-96, and issued an unfavorable decision on June 20, 2018, Tr. 270-84. The
11 Appeals Council remanded the claim for correction of technical errors on November
12 5, 2019. Tr. 290-93.

13 A different ALJ held a remand hearing on August 13, 2020, Tr. 197-222, and
14 issued an unfavorable decision on September 2, 2020. Tr. 15-28. Plaintiff requested
15 review from the Appeals Council and the Appeals Council denied the request for
16 review on December 7, 2020. Tr. 1-5. The ALJ's September 2020 decision became
17 the final decision of the Commissioner, which is appealable to the district court
18 pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on
19 January 20, 2021. ECF No. 1.

20
21
22
23
24
25
26 //

27
28 //

STATEMENT OF FACTS

Plaintiff was born in 1971 and was 43 years old as of his date last insured in March 2015. Tr. 26. He dropped out of high school and was never able to complete his GED requirements. Tr. 701. He worked for over a decade as a truck driver until September 2009, when he was in a work-related motor vehicle accident that resulted in injuries to Plaintiff and the death of another motorist. Tr. 580-81. He briefly returned to work at light duty but was unable to sustain the job. Tr. 592. Following the accident, Plaintiff was treated conservatively for back, neck, and hip pain. Tr. 571-80. He has not worked since 2009. He previously applied for disability benefits in 2012 and was denied in a 2014 ALJ unfavorable decision. Tr. 226-37.

STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind

1 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.
2 389, 401 (1971). If the evidence is susceptible to more than one rational
3 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,
4 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,
5 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
6 if conflicting evidence supports a finding of either disability or non-disability, the
7 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
8 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
9 set aside if the proper legal standards were not applied in weighing the evidence and
10 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
11 432, 433 (9th Cir. 1988).

16 SEQUENTIAL EVALUATION PROCESS

17 The Commissioner has established a five-step sequential evaluation process
18 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*
19 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears
20 the burden establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-
21 1099. This burden is met once a claimant establishes that a physical or mental
22 impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §
23 404.1520(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds
24 to step five, and the burden shifts to the Commissioner to show (1) the claimant can
25
26
27
28

1 make an adjustment to other work; and (2) the claimant can perform specific jobs
2 that exist in the national economy. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
3 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an adjustment to other
4 work in the national economy, the claimant will be found disabled. 20 C.F.R. §
5 404.1520(a)(4)(v).
6

7 8 ADMINISTRATIVE FINDINGS

9 On September 2, 2020 the ALJ issued a decision finding Plaintiff was not
10 disabled as defined in the Social Security Act.
11

12 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
13 activity from the alleged onset date through the date last insured of March 31, 2015.
14 Tr. 18.

15 At step two, the ALJ determined Plaintiff had the following severe
16 impairments: degenerative disc disease vs. cervical, thoracic, and lumbar strain,
17
18 affective disorder, somatoform disorder, and borderline intellectual functioning. *Id.*

19 At step three, the ALJ found Plaintiff did not have an impairment or
20 combination of impairments that met or medically equaled the severity of one of the
21 listed impairments. Tr. 19-20
22

23 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found
24 he could perform work at the light exertional level, except:
25

26 The claimant could occasionally climb ladders, ropes, or
27 scaffolds. The claimant could occasionally stoop, kneel, crouch,
28

1 or crawl. The claimant needed to avoid concentrated exposure to
2 hazards.

3 The claimant could carry out simple, routine tasks. The claimant
4 could work in proximity to coworkers, but no tandem tasks
5 requiring cooperative effort. The claimant could perform work
6 that did not require interaction with the general public.

7 Tr. 20.

8 At step four, the ALJ found Plaintiff was unable to perform his past relevant
9 work as a sales route driver. Tr. 26.

10 At step five, the ALJ determined that, based on the testimony of the vocational
11 expert, and considering Plaintiff's age, education, work experience, and RFC,
12 Plaintiff was capable of performing jobs that existed in significant numbers in the
13 national economy, including the jobs of cleaner housekeeping, marker, and cafeteria
14 attendant. Tr. 26-27.

15 The ALJ thus concluded Plaintiff was not under a disability within the
16 meaning of the Social Security Act at any time from the alleged onset date through
17 the date last insured. Tr. 27-28.

22 ISSUES

23 The question presented is whether substantial evidence supports the ALJ's
24 decision denying benefits and, if so, whether that decision is based on proper legal
25 standards.
26
27
28

1 Plaintiff contends the ALJ erred by (1) improperly discounting Plaintiff's
2 subjective complaints; and (2) improperly evaluating medical opinion evidence.
3
4

5 DISCUSSION

6 1. Plaintiff's Symptom Statements

7
8 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without
9 providing adequate reasons. ECF No. 13 at 6-10.
10

11 It is the province of the ALJ to make determinations regarding a claimant's
12 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
13 However, the ALJ's findings must be supported by specific cogent reasons. *Rashad*
14 *v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
15 malingering, the ALJ's reasons for rejecting a claimant's testimony must be
16 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
17 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are
18 insufficient: rather the ALJ must identify what testimony is not credible and what
19 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
20 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).
21
22
23
24

25 The ALJ found Plaintiff's medically determinable impairments could
26 reasonably be expected to cause the alleged symptoms; however, he found Plaintiff's
27 statements concerning the intensity, persistence and limiting effects of his symptoms
28

1 were not entirely consistent with the medical evidence and other evidence in the
2 record. Tr. 21. The ALJ found Plaintiff's allegations regarding his physical condition
3 were out of proportion to the imaging and exams and the opinions of his treating
4 provider releasing him to light duty work. Tr. 21-22. The ALJ further found
5 Plaintiff's mental allegations to be inconsistent with mild exam findings and his lack
6 of treatment for mental health complaints, and that his low intellectual functioning
7 was a life-long condition that had not prevented him from working prior to his
8 accident. Tr. 22-23. Finally, the ALJ noted evidence of symptom magnification and
9 providers opining Plaintiff's subjective reports were in excess of the objective
10 findings. Tr. 23.

14
15 Plaintiff argues the ALJ erred in evaluating his reports, asserting that the
16 nature of his somatic disorder is that he experiences pain that cannot be explained
17 by objective medical findings, thus undermining the ALJ's analysis with respect to
18 the exam results and Plaintiff's exaggerated symptom complaints. ECF No. 13 at 6-
19 10. Defendant argues the ALJ offered numerous valid bases for disregarding the
20 extent of Plaintiff's symptom allegations, including a lack of support from the
21 objective findings, contrary medical source opinions, a lack of treatment for mental
22 health problems, and evidence of Plaintiff's disability conviction. ECF No. 14 at 3-
23 11.

1 The Court finds the ALJ did not err. The ALJ reasonably found the record to
2 be unsupportive of the extent of Plaintiff's physical allegations. Although it cannot
3 serve as the sole ground for rejecting a claimant's symptom statements, objective
4 medical evidence is a "relevant factor in determining the severity of the claimant's
5 pain and its disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
6 2001). The record contains ample evidence from various medical sources that
7 Plaintiff was capable of performing light-level work and was claiming physical
8 limitations in excess of the findings on exams. Tr. 21-22, 572-74, 589, 3727-28.
9 While some sources attributed this behavior to Plaintiff's somatic symptom disorder,
10 the ALJ had substantial evidence to support his conclusion that Plaintiff's reports
11 were unreliable, even if this did not indicate any conscious intent to deceive. Tr. 709-
12 10, 589, 611-12, 3727-28, 3749-51.

13 The ALJ reasonably found that the lack of psychiatric treatment or
14 medication, or reports of any emotional or cognitive problems during the relevant
15 period further undermined any claims of disability based on mental health or
16 cognitive impairment. "If a claimant complains about disabling pain but fails to seek
17 treatment, or fails to follow prescribed treatment, for the pain, an ALJ may use such
18 failure as a basis for finding the complaint unjustified or exaggerated...." *Orn v.*
19 *Astrue*, 495 F.3d 625, 638 (9th Cir.2007).

1 Finally, the ALJ noted that multiple examining doctors felt Plaintiff had a
2 disability conviction or lacked motivation or belief that he could return to work. This
3 was a relevant factor for the ALJ to consider in assessing the reliability of Plaintiff's
4 complaints. For purposes of Social Security disability, a claimant's inability to work
5 must stem from a medically determinable physical or mental impairment, not simply
6 from their own beliefs. 20 C.F.R. § 404.1505.
7

8
9 The Court finds the ALJ offered clear and convincing reasons for discounting
10 the extent of Plaintiff's alleged limitations.
11

12 **2. Medical Opinion Evidence**

13 Plaintiff argues the ALJ improperly rejected the opinion from consultative
14 examiner Donald Williams and afforded undue weight to the independent medical
15 examiner Rebecca Fischer. ECF No. 13 at 10-16.
16

17 When an examining physician's opinion is contradicted by another physician,
18 the ALJ is required to provide "specific and legitimate reasons," based on substantial
19 evidence, to reject the opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).
20 The specific and legitimate standard can be met by the ALJ setting out a detailed and
21 thorough summary of the facts and conflicting clinical evidence, stating their
22 interpretation thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747,
23 751 (9th Cir. 1989). The ALJ is required to do more than offer their conclusions,
24
25
26
27
28

1 they “must set forth [their] interpretations and explain why they, rather than the
2 doctors’, are correct.” *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

3
4 **a. Dr. Williams**

5 In May 2014, Plaintiff attended a consultative psychological exam with Dr.
6 Donald Williams, in connection with his prior application for Social Security
7 disability benefits. Tr. 696. Dr. Williams reviewed some records and conducted a
8 clinical interview and objective testing, and diagnosed Plaintiff with somatic
9 symptom disorder, unspecified depressive disorder, unspecified anxiety disorder,
10 and borderline intellectual functioning. Tr. 709. He opined Plaintiff was most limited
11 by his intellectual functioning and his pain disorder associated with psychological
12 factors and a general medical condition, and noted that his lack of sophistication and
13 cognitive limitations resulted in him channeling much of his emotional distress into
14 pain complaints. Tr. 710. Dr. Williams found Plaintiff to be markedly limited in his
15 ability to understand and remember detailed instructions, maintain attention and
16 concentration for extended periods, respond to change, set realistic goals, perform
17 within a schedule, maintain regular attendance, complete a normal workday or work
18 week without interruption from psychiatric symptoms, and perform at a consistent
19 pace without an unreasonable number and length of breaks. 710.

20 The ALJ gave this opinion little weight, noting it predated the relevant period,
21 was issued during a period that was already adjudicated, and was contrary to the
22
23
24
25
26
27
28

1 opinion of Dr. Fischer. Tr. 24-25. The ALJ further found the opinion inconsistent
2 with treatment notes showing only mild mental status findings, and documenting no
3 significant mental complaints during the relevant period. *Id.* Finally, the ALJ found
4 the opinion relied on Plaintiff's self-reports, which were not reliable. *Id.*

6 Plaintiff argues the ALJ erred, as the opinion was offered only a couple of
7 months prior to the current relevant period, and reflected Plaintiff's long-standing
8 impairments, and thus was still relevant a few months after the exam was completed.
9 ECF No. 13 at 12. Plaintiff further argues Dr. Fischer's opinion only discussed
10 PTSD, which was the only condition accepted for Plaintiff's worker's compensation
11 claim, and thus the opinion did not contradict Dr. Williams' opinion. *Id.* at 13.
12 Finally, Plaintiff argues the mild objective findings the ALJ identified did not relate
13 to the somatic symptom disorder that Dr. Williams found was the primary factor
14 limiting Plaintiff's abilities and that Dr. Williams did not unduly rely on Plaintiff's
15 subjective reports. *Id.* at 14-16. Defendant argues the ALJ reasonably found Dr.
16 Williams' opinion to be of minimal value based on the fact that it was from prior to
17 the relevant period, had already been considered by the previous ALJ, was
18 inconsistent with unremarkable mental health records, and was based in part on
19 Plaintiff's unreliable self-reports. ECF No. 14 at 11-16.

26 The Court finds the ALJ did not err. An ALJ may reasonably consider a
27 medical opinion's consistency with the record as a whole. 20 C.F.R. §
28

1 404.1528(c)(4). The ALJ noted the lack of significant mental health findings
2 throughout the relevant period, and found Dr. Williams' opinion to be inconsistent
3 with the lack of complaints regarding mental health. Tr. 24. A doctor's opinion may
4 also be discounted if it is "based to a large extent on a claimant's self-reports that
5 have been properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035,
6 1041 (9th Cir. 2008). As discussed above, the ALJ gave sufficient reasons for finding
7 Plaintiff's subjective allegations to be unreliable. The ALJ's interpretation of Dr.
8 Williams' opinion as relying in part of Plaintiff's self-reported symptoms and
9 limitations is a reasonable interpretation of the record. While Plaintiff offers a
10 different explanation regarding the nature of his somatic disorder, the Court finds
11 the ALJ's interpretation is supported by substantial evidence.

12 Finally, the Court notes that Dr. Williams' report was submitted to and
13 discussed by the prior ALJ in connection with Plaintiff's previous application for
14 SSD benefits. Tr. 234. That ALJ assigned very little weight to Dr. Williams' opinion
15 as it conflicted with other evidence of record and Plaintiff's daily activities. *Id.* The
16 Court acknowledges that the previous adjudication has become final and has *res*
17 *judicata* effect for the previously adjudicated period. *Lester v. Chater*, 81 F.3d 821
18 (9th Cir. 1995).

1 ***b. Dr. Fischer***

2 In September 2014 Plaintiff attended a psychological independent medical
3 exam with Dr. Rebecca Fischer for his worker's compensation claim. Tr. 591-612.
4 Dr. Fischer noted the only accepted psychological condition for purposes of the
5 worker's compensation claim was PTSD. Tr. 591. She found additional diagnoses
6 of unspecified depressive disorder and somatic symptom disorder with predominant
7 pain, but noted that they were not caused or exacerbated by the work-related injury.
8 Tr. 611-12. Dr. Fischer found Plaintiff did not endorse any current symptoms of
9 PTSD, and was able to work on a full-time basis with respect to that condition. Tr.
10 612.
11

12 The ALJ gave this opinion partial weight, noting it was consistent with the
13 overall evidence, including the lack of mental health treatment or complaints during
14 the relevant period, but noted that Dr. Fischer did not offer an opinion about
15 Plaintiff's residual functional capacity. Tr. 25.
16

17 Plaintiff argues this opinion was not entitled to any weight because it was
18 limited to the effects of PTSD, a condition that was in remission and that the ALJ
19 found to be non-severe, and did not comment on any of Plaintiff's actual severe
20 impairments. ECF No. 13 at 16. The Court finds no error, as the ALJ acknowledged
21 that Dr. Fischer did not offer any functional limitations, and thus her opinion was
22
23
24
25
26
27
28

1 not entitled to more weight. Tr. 25. There is no harm in the ALJ acknowledging the
2 opinion with respect to Plaintiff's lack of PTSD symptoms.

3
4 **3. Vocational Counselor**

5 Plaintiff argues the ALJ erred in disregarding the opinions from Plaintiff's
6 vocational counselor, Kaethe Long. ECF No. 13 at 16-19.

7
8 An ALJ may discount the opinion of an "other source," such as a vocational
9 counselor or other lay witness, if they provide "reasons germane to each witness for
10 doing so." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

11
12 In July 2014, Ms. Long issued a report regarding closing Plaintiff's vocational
13 services due to his lack of employability. Tr. 2075. She noted that given his physical
14 and mental limitations and his inability to obtain his GED, there were no occupations
15 he could be placed in. 2075-83.

16
17 The ALJ gave little weight to Ms. Long's report, noting she was not a medical
18 source, the assessed physical limits were based on a physical capacity evaluation
19 performed in 2011, and that the mental functional opinion relied on Dr. Williams'
20 report, which the ALJ had assigned little weight to. Tr. 25. The ALJ further noted
21 that Plaintiff's lack of a GED was a vocational issue, not a medical factor, and that
22 the issue of whether there are jobs an individual can perform is an issue reserved to
23 the Commissioner. *Id.*

1 Plaintiff argues the ALJ erred in rejecting this opinion, asserting the 2011
2 physical capacity assessment was largely consistent with the RFC the ALJ found,
3 the ALJ improperly rejected Dr. Williams' opinion, and that Plaintiff's inability to
4 obtain a GED was a part of his intellectual and psychological symptoms. ECF No.
5 13 at 16-19. Defendant argues the ALJ's rationale easily met the germane standard,
6 as Ms. Long relied on evidence with minimal relevance to Plaintiff's functioning
7 and she relied on non-medical factors in reaching her conclusion. ECF No. 14 at 18-
8 20.
9
10
11

12 The Court finds the ALJ offered germane reasons for discounting Ms. Long's
13 opinion. As discussed above, the ALJ gave sufficient reasons for discounting Dr.
14 Williams' opinion, and thus reasonably also discounted Ms. Long's opinion for
15 being based on the limitations assessed by Dr. Williams. The ALJ also accurately
16 found that the issue of the application of vocational factors, including whether there
17 are any jobs a claimant can perform, is an issue reserved to the Commissioner. 20
18 C.F.R. § 404.1527(d). The ALJ offered germane reasons for discounting Ms. Long's
19 opinion.
20
21
22

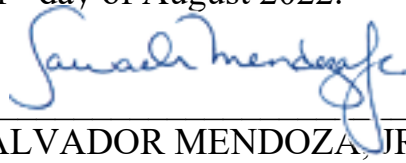
23 CONCLUSION

24 Having reviewed the record and the ALJ's findings, the Court finds the ALJ's
25 decision is supported by substantial evidence and free of legal error and is affirmed.
26 Accordingly, **IT IS HEREBY ORDERED:**
27
28

- 1 1. Defendant's Motion for Summary Judgment, **ECF No. 14**, is
2 **GRANTED.**
- 3 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED.**
- 4 3. The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**
5 this file.
6

7
8 **IT IS SO ORDERED.** The Clerk's Office shall enter this Order and provide
9 copies to all counsel.

10
11 **DATED** this 11th day of August 2022.

12 
13

14 SALVADOR MENDOZA JR.
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28